

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

OLYMPIC FITNESS CENTER, INC.,

Respondent.

AGREED ORDER

This cause arose upon Respondent's failure to comply with the Assurance of Voluntary Compliance that was entered on December 22, 1995, resolving the issues relevant to the State's investigation. Based upon the agreement of the parties and the record herein, the Court finds that the plaintiff's Motion for Statutory Sanctions should be granted.

The parties agree and the Court concurs that it is highly likely that the State will succeed on the merits of this motion showing that respondent has violated the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.*, through its failure to register and submit contracts to the Division of Consumer Affairs in compliance with the Tennessee Consumer Protection Act and in violation of an Assurance of Voluntary Compliance entered in this Court on December 22, 1995.

I. CONFORM CONTRACTS TO STATE LAW

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that respondent, Olympic Fitness Center, Inc. shall be required to maintain its health club agreements to conform with the Tennessee Consumer

Protection Act. Specifically, Respondent shall not collect an initiation fee from consumers in violation of TCPA. Further, Respondent shall be required to clearly and conspicuously inform consumers of the "Buyer's Right to Cancel" in the manner set forth in TCPA.

II. MAINTAIN VALID HEALTH CLUB REGISTRATION

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Respondent shall be enjoined and forever required to maintain a Department of Commerce and Insurance, Division of Consumer Affairs certificate of health club registration for each and every health club that respondent operates in compliance with TCPA. Respondent shall be forever enjoined and prohibited from offering health club services or agreements to the public unless it has a valid health club registration. Attached as Exhibit A is a copy of Respondent's valid health club registration.

III. JURISDICTION, VENUE AND EFFECT OF ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this Order shall remain in full force and effect pending further orders of this Court. The Court shall retain jurisdiction of this matter for all purposes. Jurisdiction of this Court over the subject matter herein and over the persons of the Respondent for the purposes of entering into and enforcing this Agreed Order Imposing Statutory Sanctions is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order, including enforcement of compliance therewith and additional assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys' fees and any costs associated with any petitions to enforce any provision of this Agreed Order against Respondent. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Order is solely in the Chancery Court of Davidson County, Tennessee. The Respondent shall continue to be required to comply with all provisions of the Assurance entered in this matter. That Assurance and accompanying Agreed Order shall remain in full force and effect.

IV. POSSIBLE FUTURE MODIFICATION BY COURT

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Respondent shall comply with the terms thereof unless rescinded in writing by the parties or modified by this Court for good cause shown.

V. ATTORNEYS' FEES AND COSTS

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Respondent shall pay to Attorney General the amount of Five Hundred Dollars and 00/100 (\$500.00) which shall be designated for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter which may be used for consumer protection purposes at the sole discretion of the Attorney General. This amount shall be paid as set forth in paragraph VII.

VI. CIVIL PENALTIES

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Respondent shall pay to the State of Tennessee the amount of One Thousand Dollars and 00/100 (\$1,000.00) as a civil penalty in this matter pursuant to Tenn. Code Ann. §47-18-107(f).

VII. FORBEARANCE ON EXECUTION AND DEFAULT

IT IS FURTHER ORDERED, ADJUDGED and DECREED that no execution or garnishment on the monetary portion of this Agreed Order shall issue so long as the Respondent makes payment in accordance with paragraph VII herein. In the event Respondent fails to make any such payment within thirty (30) days of its due date, the entire balance of this Agreed Order then remaining may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Agreed Order. Respondent agrees to pay attorneys' fees and costs associated with any such collection efforts.

Payment shall be made to the Consumer Protection Division, Office of Attorney General as follows: \$250.00 due December 15, 1998 and the first of each month thereafter until paid in full. All payments shall be in the form of a certified or cashier's check.

Respondent shall be required to retain proof of all payments to the State in the form of canceled checks for each payment for a full 24 months following their final payment to the State. Respondent shall provide proof of all payments to the State within 10 days of a request for such information.

Respondent agrees that any and all such sums are non-dischargeable in a bankruptcy proceeding given the same are punitive in nature.

The first two payments made by the Respondent shall be applied to the attorneys' fees with the

remaining payments to be applied to the civil penalties.

VIII. NO BOND REQUIRED

Pursuant to Tenn. Code Ann. § 47-18-109(a)(4), the State is not required to provide a security bond.

VIV. COSTS

Pursuant to Tenn. Code Ann. §47-18-416, all costs shall be taxed to respondent. Further, no discretionary costs shall be taxed to plaintiff.